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HARTA TUAS SDN BHD

v.

UB USAHABINA SDN BHD

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HIGH COURT MALAYA, MELAKA
LOW HOP BING J
[CIVIL SUIT NO: MT1-22-169-2003]
18 APRIL 2006

C ***CIVIL PROCEDURE:*** *Summary judgment - Delay in application - Orders 14 and 32 Rules of the High Court 1980 - What constitute triable issues - Whether rendering of final accounts a pre-requisite to bringing action*

D The defendant accepted the plaintiff's tender to carry out certain works subject to the terms and conditions contained in an agreement dated 8 June 1998 ('the agreement'). The plaintiff completed the works and the defendant made several progress payments to the plaintiff for the same. When the defendants refused to make the remainder of the payments, the plaintiff commenced an action in the High Court and *vide* encl. 13 sought summary judgment against the defendant, which was allowed by the registrar on 28 May 2004 with interest and costs ('said decision'). This was an appeal lodged by the defendant against the said decision: (a) whether the service of encl. 13 (O. 14 application) complied with O. 32 r. 3(2) and O. 14 r. 2(3) Rules of the High Court 1980 ('RHC'); (b) whether there was a delay on the plaintiff's part in filing encl. 13; (c) whether the difference in the sum claimed in the statement of claim and *vide* the contract sum in the agreement constituted a triable issue; (d) whether the defects in the works and the employment of another contractor constituted a triable issue; and (e) whether the plaintiff's claim was premature by reason of the final accounts not having been rendered by the Water Supply Department of Negeri Sembilan ('the department').

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Held (dismissing the defendant's appeal):

(1) Order 14 r. 2(3) RHC specifically provides that an O. 14 application must be served four clear days before the return date. In the instant case, the O. 14 application had been

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served not less than 15 clear days and therefore had more than adequately complied with the four-day rule in O. 14 r. 2(3) RHC. (paras 12 & 13)

(2) A perusal of O. 32 r. 13(2)(a) RHC led to the conclusion that the 14-day rule therein is general in effect and only applies to an affidavit, and can only be invoked if the other RHC rules are inapplicable. Hence, the specific provisions contained in O. 14 r. 2(3) RHC regulating the service of encl. 13 supersedes the general provision of O. 32 r. 13(2)(a). (*Sarawak Electricity Supply Corp v. MS Shipping Sdn Bhd* (distinguished on facts). (para 15)

(3) Delay alone does not defeat an application for summary judgment *(Perkapalan Shamelin Jaya Sdn Bhd & Anor v. Alpine Bulk Transport New York)*. The defendant's contention of delay was devoid of merit. (paras 20 & 29)

(4) The difference in the sum claimed in the statement of claim and *vide* the contract sum in the agreement did not constitute a triable issue as under the subject "Contract Sum" in the agreement, the quantities were subject to final re-measurement, and the defendant had issued certificates of payment to the plaintiff for works including the quantities which had undergone the process of re-measurement and payments, thus leaving the balance of the sum claimed by the plaintiff herein. Further, the defendant's had not denied the plaintiff's averments in the statement of claim and through its defence had merely put the plaintiff to strict proof thereof or alternatively averred that the plaintiff had not completed the works properly (*Sogelease Advance (M) Sdn Bhd v. Sri Datai Engineering Sdn Bhd & Ors* dist on facts). (para 32)

(5) Although the alleged defects in the works and the employment of another contractor at the said costs might be an issue, it was nevertheless not a triable issue, as the defendant's allegation in the affidavit remained a bare allegation lacking in precision and without condescending upon particulars. (para 37)

(6) The requirements or otherwise of the rendering of final accounts by the department was to be ascertained by the true construction of the terms and conditions of the agreement executed by the parties herein for the works. There was no specific clause which was referred to which made it a

A requirement for such a final account to be rendered before a claim for the balance sum could be brought. In a nutshell, this so called final account raised by the defendant was outside the scope of the agreement and did not create a triable issue. (paras 40 & 43)

B **Case(s) referred to:**

Alloy Automotive Sdn Bhd v. Perusahaan Ironfield Sdn Bhd [1986] 1 CLJ 2; [1986] CLJ (Rep) 45 SC ***(refd)***

Bank Negara Malaysia v. Mohd Ismail & Ors [1992] 1 CLJ 627 SC ***(refd)***

Eng Mee Yong & Ors v. V Letchumanan [1979] 2 MLJ 212 ***(refd)***

C *Krishnamurthy & Anor v. Malayan Finance Corporation Bhd [1986] 2 MLJ 134* ***(refd)***

Loo Sze Kin v. Cheong Choy Teik [1997] 4 MLJ 537 HC ***(refd)***

Ng Hee Thoong & Anor v. Public Bank Bhd [1995] 1 CLJ 609 CA ***(refd)***

Overseas Investment Pte Ltd v. Anthony William O'Brien & Anor [1988] 2

D *CLJ 238; [1988] 2 CLJ (Rep) 82 HC* ***(refd)***

Perkapalan Shamelin Jaya Sdn Bhd & Anor v. Alpine Bulk Transport New York [1998] 1 CLJ 424 CA ***(foll)***

Sarawak Electricity Supply Corp v. MS Shipping Sdn Bhd [1998] 1 CLJ Supp 58 HC ***(dist)***

Sogelease Advance (M) Sdn Bhd v. Sri Datai Engineering Sdn Bhd & Ors

E *[2002] 6 MLJ 59 HC* ***(dist)***

Tetuan Kumar Jaspal Quah & Aishah lwn. Far Legion Sdn Bhd & Satu Lagi [2003] 3 CLJ 195 HC ***(refd)***

Legislation referred to:

F Rules of the High Court 1980, O. 3 r. 6, O. 14 rr. 1(1), 2(3), O. 24, O. 32 r. 13(2)(a),

Other source(s) referred to

Jainab's Key to Civil Procedure in Malaysia And Singapore, 2nd edn., p 413

G *For the defendant - Ravinathan Muthiah; M/s Ravi Muthiah & Co*
For the plaintiff - Tan Chee Giap; M/s Soh Yok Lam & Co

Reported by Sharmini Pillai

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JUDGMENT

Low Hop Bing J:

Appeal

I **[1]** This is an appeal in encl. (15) filed by the appellant-defendant ("the defendant") to me as judge in chambers against the decision of the learned registrar who had on 28 May 2004

allowed the respondent-plaintiff's ("the plaintiff's") application by way of summons in chambers, encl. (13), under O. 14 of the Rules of the High Court 1980, for summary judgment in the sum of RM508,604.21 together with interest at 8% p.a. from the date of the writ ie, 23 October 2003 to the date of realisation and costs.

[2] A reference hereinafter to an order and a rule is a reference to that order and rule in the Rules of the High Court 1980 unless the context otherwise requires.

Claim And Defence

[3] The plaintiff's claim on which summary judgment has been signed against the defendant has been set out at the commencement of this judgment.

[4] Defendant *vide* letter dated 18 May 1998 accepted the plaintiff's tender for the "construction, completion and commissioning of reinforced concrete reservoir for the trunk, main and other ancilliary works for water supply system in the district of Tampin and Rembau Negeri Sembilan Darul Khusus, more specifically the installation and commissioning of 900mm diameter water pipes and other relevant works at a consideration of RM2,969,000 ("the works"). The terms and conditions of the works were expressed in the agreement executed between the parties and stamped on 8 June 1998 ("the agreement").

[5] The plaintiff had in or about October 2001 completed the works. The defendant had from 3 August 1998 to 4 April 2004 made various progress payments to the plaintiff for the works.

[6] *Vide* defendant's certificate of payment No. 23 dated 26 March 2002, defendant confirmed that the nett value of the works done by the plaintiff was RM3,130,783.43 while the progress payments made by the defendant to the plaintiff amounted to RM2,622,179.22, thereby leaving a balance sum of RM508,604.12 which constitutes the plaintiff's claim herein.

[7] The defendant denied owing the balance sum and alleged that:

1. the defendant had received complaints from the Water Supply Department of Negeri Sembilan ("the department") that the plaintiff had failed to complete the works as directed by the defendant;

2. the defendant had to employ other contractors to complete the same at a consideration of RM223,782.52; and

3. final accounts had not been rendered by the department and so the plaintiff's claim is premature.

Service Of Summons In Chambers

[8] Citing *Sarawak Electricity Supply Corp v. MS Shipping Sdn Bhd* [1998] 1 CLJ Supp 58 HC, it was submitted by defendant's learned counsel Mr. Ravinathan Muthiah that the summons in chambers and the affidavit in support filed on 6 April 2004 (collectively "the summons in chambers") were served on the defendant's solicitors on 12 May 2004 while the hearing thereof was fixed for 28 May 2004, but O. 32 r. 13(2)(a) and O. 14 r. 2(3) provide for mandatory service within 14 days of the issue thereof ie, on or before 20 April 2004, thereby causing prejudice to the defendant in view of the documents which the defendant has to prepare in reply to the plaintiff's application.

[9] For the plaintiff, it was contended by learned counsel Mr. CG Tan that an unsealed copy of the summons in chambers and affidavit in support had been served by AR registered letter dated 1 April 2004 on the defendant's solicitor who has duly acknowledged receipt thereof on 8 April 2004, adding that the aforesaid procedural rules have been complied with, and that the sealed copy served on the defendant's solicitor on 12 May 2004 has complied with O. 14 r. 2(3).

[10] In my judgment, it is necessary to put in proper perspective the factual background in relation to the service of the summons in chambers.

[11] The plaintiff's solicitor vide courier letter dated 1 April 2004, addressed to the registrar of this court, filed three sets of the summons in chambers together with the filing fees. A letter by way of AR registered post, enclosing both the documents, was sent by way of service on the defendant's solicitor who had on 8 April 2004 duly returned to the plaintiff's solicitors the AR card affixed with a manual signature and the rubber stamp of the defendant's solicitors, complete with address, telephone and facsimile numbers. That being the case, in my view, it is now not open to the defendant to say that the defendant was not aware of the existence of the summons in chambers.

[12] In any event, it is common ground that the sealed copy of the summons in chambers had been duly served on 12 May 2004 and the return date of the summons in chambers was 28 May 2004, in which case there can be no doubt that the plaintiff has complied with O. 14 r. 2(3) which merits reproduction as follows:

> O. 14 r. 2(3)
>
> The summons, a copy of the affidavit in support and of any exhibits referred to herein must be served on the defendant not less than 4 clear days before the return date.

[13] Order 14 r. 2(3) specifically regulates the time frame within which the O. 14 application must be served ie, four days before the return date. In the instant appeal, the O. 14 application had been served not less than 15 clear days and therefore had more than adequately complied with the four-day rule in O. 14 r. 2(3).

[14] Order 32 r. 13(2)(a) expressly provides for the filing and service of an affidavit as follows:

> O. 32 r. 13(2)
>
> Save as otherwise provided in these rules:
>
> (a) an affidavit intended to be served in support of an application must be filed and served on the party within 14 days from the date of the application;

[15] A proper perusal of O. 32 r. 13(2)(a) affirmatively leads me to the conclusion that the 14-day rule prescribed therein is general in nature and effect, and applies only to an affidavit. It can only be invoked if the other rules in the Rules of the High Court 1980 are inapplicable, in view of the exception expressly contained in the opening sentence "Save as otherwise provided in these rules". Hence, the general provisions, prescribing the 14-day rule in relation to the service only of an affidavit under O. 32 r. 13(2)(a) must obviously give way to the specific provisions contained in O. 14 r. 2(3) regulating the service of an O. 14 application. *Generalisa specialibus non derogant.*

[16] In *Sarawak Electricity Supply, supra,* the application was not an O. 14 application. It was an application for an order for discovery under O. 24. That application together with an affidavit in support was filed on 19 September 1996 and served on the defendant on 14 October 1996. The defendant raised a preliminary objection that the plaintiff was in breach of O. 32

A r. 13(2)(a) because the affidavit in support was served outside the 14-day period. Steven Shim J (now CJ (Sabah & Sarawak)) allowed the preliminary objection.

[17] The readily distinguishable feature in *Sarawak Electricity*
B *Supply*, *supra*, is to be found in the subject matter of the application ie, O. 24 application for discovery which is outside the scope and ambit of O. 14 r. 2(3) which in turn specifically provides for the four-day rule in the case of an O. 14 application.

[18] Hence, I am unable to sustain the defendant's contention
C herein.

Plaintiff's Delay

[19] It was argued for the defendant that there was a delay on
D the part of the plaintiff in filing the O. 14 application, in that the defendant has filed the memorandum of appearance on 3 December 2003 and defence on 31 December 2003 while the plaintiff had only filed the O. 14 application on 6 April 2004 without any explanation for such delay, adding that the plaintiff
E should have filed the O. 14 application after the defendant has filed the memorandum of appearance. Support was sought in *Loo Sze Kin v. Cheong Choy Teik* [1997] 4 MLJ 537 HC; and *Ng Hee Thoong & Anor v. Public Bank Bhd* [1995] 1 CLJ 609 CA.

[20] Plaintiff took the position that delay alone does not defeat
F an application for summary judgment, relying on *Perkapalan Shamelin Jaya Sdn Bhd & Anor v. Alpine Bulk Transport New York* [1998] 1 CLJ 424 CA.

[21] The above submissions seem to give the impression of some
G divergence of judicial opinion in relation to this procedural point.

[22] In my judgment, it is appropriate to refer to the governing provisions contained in O. 14 r. 1(1) as follows:

H O. 14 r. 1

(1) Where in an action to which this rule applies, a statement of claim has been served on a defendant and that the defendant has entered an appearance in the action, the plaintiff may, on the ground that the defendant has no defence to a claim included in the writ, or to a particular part of such a claim
I or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the court for judgment against the defendant.

[23] Order 14 r. 1(1) came up for judicial consideration by Ian Chin J in *Loo Sze Kin, supra,* where one of the issues raised was whether the court was precluded from considering the merits of the plaintiff's application for summary judgment when the application was not made timeously and there was no explanation in the affidavit for the delay. Much as the learned judge disagreed, his Lordship followed *Krishnamurthy & Anor. v. Malayan Finance Corporation Bhd.* [1986] 2 MLJ 134 where the Supreme Court through the judgment of Salleh Abas LP (as he then was) observed at p. 135:

> ... the law as to the time when an application for an Order 14 judgment could be made is settled law. The application must be made after an appearance has been entered and it could be made either before or after the delivery of defence provided that where it was made after the delivery of the defence, the plaintiff must explain the delay. If this explanation was not accepted by the court no Order 14 judgment could be signed. This is the *ratio decidendi* in *McLardy v. Slateum* [1890] 24 QBD 504. This case was followed by Raja Azlan Shah, J (as he then was) in *Comptroller-General of Inland Revenue, Malaysia v. Weng Lok Mining Co. Ltd.* [1969] 2 MLJ 98 and Abdoolcader, J (as he then was) in *Societe des Etains de Bayas Tudjuh v. Woh Heng Mining Kongsi* [1978] 2 MLJ 267.

[24] Ian Chin J observed that O. 14 r. 1 does not spell out the time within which the application must be made and thus does not prohibit an application after a defence is filed (*Jainab's Key to Civil Procedure in Malaysia And Singapore* (2nd edn.) p 413), let alone proscribing an application (without any explanation as to why the application was not made earlier) after a defence is delivered.

[25] The learned judge's aforesaid disagreement appears to have been tacitly and adequately vindicated and supported by the Court of Appeal in *Perkapalan Shamelin, supra,* where the plaintiff brought an action against the defendants for recovery of moneys arising out of the defendants' default in payment in respect of a charterparty. The plaintiff's writ was issued on 11 August 1993. The defendants entered an appearance and subsequently delivered their defence on 29 September 1993. On 23 February 1994, the plaintiff took out an O. 14 summons which the defendants had opposed on grounds of inordinate and unexplained delay in moving the court for summary judgment. The learned judge of the first instance granted the defendants leave to defend on condition that

A the defendants deposited the claimed sum with the plaintiff's solicitors. The defendants appealed against that decision. In unanimously dismissing the appeal, the Court of Appeal delivered two judgments. Gopal Sri Ram JCA:

B 1. emphasised the particular passage put forward by Pollock B in *McLardy v. Slateum, supra,* to the effect that although the primary intention of the rule may be that an application should be made before a defence has been delivered in the ordinary course, yet it is not in all cases compulsory; and

C 2. referred to the judgment in *Comptroller General of Inland Revenue, supra,* where Raja Azlan Shah J (now HRH the Sultan of Perak) granted an O. 14 summons for judgment taken out about three months after appearance had been entered to the writ.

D **[26]** NH Chan JCA (as he then was) in delivering the other judgment:

1. also referred to the above passage in *McLardy, supra,* where
E the plaintiff was successful in obtaining O. 14 judgment after the defence was served and held that an application for leave to sign judgment under O. 14 need not necessarily be made before the defendant delivered his defence, as delay in applying for O. 14 is no ground for defeating the plaintiff's
F right to summary judgment when there is no real defence disclosed;

2. referred to the judgment of Raja Azlan Shah J (now HRH the Sultan of Perak) in *Comptroller-General of Inland Revenue, supra,*
G that "If the plaintiff is precluded from the application for summary judgment, it would only mean unnecessary prolongment (*sic*, NH Chan JCA thought the word was "prolongation") of the case, resulting in a waste of time and added expense for the defendant company";

H 3. regretted that Abdoolcader J (later FJ) had given unnecessary and excessive prominence to the dictum of Pollock B when there was nothing in the wording to warrant construction to the effect that if a plaintiff makes his application after the ordinary time, the onus is on him to show that the delay is
I justifiable under the special circumstances of the case, when

in fact there was no explanation given by the plaintiff in *McLardy* for the delay in applying for O. 14, yet, he succeeded in obtaining judgment under the rule; and

4. explained that the words of Salleh Abas FJ in *Krishnamurthy, supra, viz* "provided that where it was made after the delivery of the defence, the plaintiff must explain the delay. If this explanation was not accepted by the court no O. 14 application could be signed" were only dicta as no defence was ever filed in that case and the plaintiff was successful in obtaining summary judgment against the defendants.

[27] Further, defendant's reliance on *Ng Hee Thoong, supra,* seems to be misconceived. The crux of that case concerns the delay under O. 3 r. 6 and not under O. 14. The plaintiff there have obtained judgment in default of appearance against the defendants who then applied to set it aside, alleging in the affidavits that no demand had been made on them as guarantors. The court set aside the default judgment and the defendants delivered their defence. About 15 months later, the plaintiff took out an O. 14 application. The defendants opposed it on the ground that they have not received any demand from the plaintiff and that the plaintiff had not given them one month's notice of its intention to proceed as required under O. 3 r. 6 in view of the delay exceeding one year since the last proceedings. Gopal Sri Ram JCA in delivering judgment of the Court of Appeal held on the facts that it was for the plaintiff to give an explanation by affidavit on the delay point under O. 3 r. 6.

[28] In *Perkapalan Shamelin, supra,* the same learned judge took the opportunity to categorically stress that in *Ng Hee Thoong, supra,* the Court of Appeal granted leave to defend principally on the ground that the issue of whether a valid demand had been made of the defendants in that case was plainly arguable, and that when properly understood, there was nothing in *Ng Hee Thoong* to suggest that an application for summary judgment may be defeated solely on the ground that there has been a delay in moving the court.

[29] Having embarked upon the above analysis, I am of the view that the position has now been illuminated by the Court of Appeal in *Perkapalan Shamelin, supra,* as alluded to above, which I hereby follow and apply, with the result that the defendant's contention herein is in my view devoid of merits.

A **Alleged Incomplete Statement Of Claim**

[30] It was submitted for the defendant that the plaintiff's statement of claim was incomplete as para 3 thereof refers to the contract sum of RM3,130,783.45 while the actual contract sum B stated in the agreement was RM2,969,000, which therefore constitutes a triable issue, seeking support in *Sogelease Advance (M) Sdn Bhd v. Sri Datai Engineering Sdn Bhd & Ors* [2002] 6 MLJ 59 HC.

C **[31]** The plaintiff stressed that the plaintiff's claim is correct based on the agreement for the installation and commissioning of the 900mm water pipes.

[32] The answer to the above submissions is to be ascertained from the terms and conditions contained in the agreement, D particularly under the paragraph entitled "contract sum" which expressly stated that the quantities are subject to final re-measurement. Certificates of payment had been issued by the defendant for the works including the quantities which have undergone the process of re-measurement and payments therefor E had been made by the defendant to the plaintiff, leaving the balance sum claimed by the plaintiff herein. Defendant's 10-paragraph defence had not denied the plaintiff's averment in para 3 of the statement of claim for the sum of RM3,130,783.45. Para 2 of the defence merely put the plaintiff to strict proof of F the plaintiff's claim or alternatively the plaintiff has not completed the works properly.

[33] The facts in *Sogalease Advance, supra,* are readily distinguishable from those in the instant appeal. There the G plaintiff's application for summary judgment was dismissed by both the learned registrar and on appeal by Vincent Ng J, on the ground that the plaintiff's claim for special damages had not been sufficiently set out with clarity in its supporting affidavits.

H **Alleged Defects**

[34] The defendant has in its defence alleged defects in the works and the employment of another contractor as a triable issue.

[35] It was argued for the plaintiff that the defendant's allegation I remains a bare allegation, there being no triable issue, relying on *Bank Negara Malaysia v. Mohd Ismail & Ors* [1992] 1 CLJ 627.

[36] Upon a proper perusal of the defendant's affidavit in opposition, I am of the view that the defendant's allegation of defects in the works did not condescend upon particulars. The function of a judge in hearing an O. 14 application has been set out in the majority judgment delivered by Mohamed Azmi SCJ (as he then was) for the Supreme Court in *Bank Negara Malaysia, supra,* where the salient principles may be stated as follows:

1. Basic to the application is the requirement under O. 14 for the court to be satisfied on affidavit evidence that the defence has not only raised an issue but also that the said issue is triable;

2. The determination of whether an issue is or is not triable must necessarily depend on the facts or the law arising from each case as disclosed in the affidavit evidence before the court;

3. On the treatment of conflict of evidence on affidavits, although in the normal way it is not appropriate for a judge to attempt to resolve conflicts of evidence on affidavit, this does not mean that he is bound to accept uncritically, as raising a dispute of fact which calls for further investigation, every statement on an affidavit however equivocal, lacking in precision, inconsistent with undisputed contemporary documents or other statement by the same deponent, or inherently improbable in itself it may be, following the advice delivered for the Privy Council by Lord Diplock in *Eng Mee Yong & Ors. v. V. Letchumanan* [1979] 2 MLJ 212 at p. 217;

4. Under an O. 14 application, the duty of a judge does not end as soon as a fact is asserted by one party, and denied or disputed by the other in an affidavit; and

5. Where such assertion, denial or dispute is equivocal, or lacking in precision or is inconsistent with undisputed contemporary documents or other statements by the same deponent, or is inherently improbable in itself, then the judge has a duty to reject such assertion or denial, thereby rendering the issue not triable.

[37] Applying the above principles generally and principle (3) specifically, I am of the view that while the alleged defects in the works and the employment of another contractor at the said costs

may be an issue, it is nevertheless not a triable issue, as the defendant's allegation in the affidavit remains a bare allegation lacking in precision and without condescending upon particulars.

Final Account

[38] In raising this final issue pleaded in the defence, which I have set out above, the defendant relied on the defects liability period of 12 months to preclude the signing of O. 14 judgment, and submitted that the department has not rendered the final account, citing *Tetuan Kumar Jaspal Quah & Aishah lwn. Far Legion Sdn Bhd dan Satu Lagi* [2003] 3 CLJ 195 HC.

[39] The plaintiff's response is that this is again a bare allegation and that the plaintiff's completion of the works in or about October 2001 has never been denied by the defendant. The plaintiff relied on *Overseas Investment Pte Ltd v. Anthony William O'Brien & Anor* [1988] 2 CLJ 238; [1988] 2 CLJ (Rep) 82 HC.

[40] In my judgment, the requirement or otherwise of the rendering of final account by the department is to be ascertained by the true construction of the terms and conditions of the agreement executed by the parties herein for the works. Defendant's learned counsel did not refer to any specific clause in the agreement which either expressly or impliedly makes such final account a requirement for the plaintiff to succeed in the claim for the balance sum.

[41] In order not to leave any stone unturned, I have microscopically perused the agreement so as to arrive at a decision as to whether this is a triable issue. The department has been described as a client of the defendant. Under the paragraph entitled "Contract Sum", it has been expressly agreed that the quantities in the Bill of Quantities are provisional and subject to final re-measurement. The paragraph entitled "Terms of Payment" makes no reference whatsoever to the requirement of the rendering of final account at all. The provisions governing the defects liability period in para (g) refer to a period of 12 months "from the date of completion" of the works, which ended in October 2002. The plaintiff's claim was filed on 23 October 2003. As these averments of facts in the plaintiff's affidavit had never been denied by the defendant, it is settled that the defendant is deemed to have admitted them: see eg, *Overseas Investment*, *supra*,

per Mahadev Shankar J (later JCA); *Ng Hee Thoong, supra,* per Gopal Sri Ram JCA; and *Alloy Automotive Sdn. Bhd. v. Perusahaan Ironfield Sdn Bhd* [1986] 1 CLJ 2; [1986] CLJ (Rep) 45 SC.

[42] The facts in *Tetuan Kumar, supra,* cited for the defendant do not share any similarity with those in the instant appeal. There the plaintiff's claim for legal fees had been disputed by the defendant on the ground that the person who had purportedly agreed thereto had not been authorised to do so. The registrar's signing of O. 14 judgment in favour of the plaintiff was, on appeal, set aside by Zulkefli J (now JCA) as the issue should be tried.

[43] In a nutshell, this so-called final account raised for the defendant is outside the scope of the agreement and does not create a triable issue.

Conclusion

[44] On my finding that the defendant has failed to raise any triable issue, the plaintiff is entitled to sign summary judgment under O. 14, which the learned registrar has correctly granted and which I hereby affirm. I therefore dismiss this appeal with costs.